

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOHNNIE B. ROSE,

Plaintiff,

v.

Case No. 24-cv-405-pp

JOSUE AYALA and JOSHUA HERMANN,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION FOR
LEAVE TO PROCEED ON APPEAL WITHOUT PREPAYING APPELLATE
FILING FEE (DKT. NO. 47)**

On December 23, 2024, the court granted the defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), dismissed this case as untimely and entered final judgment. Dkt. Nos. 39, 40. On January 8, 2025, the plaintiff filed a motion for reconsideration and a notice of appeal from the judgment. Dkt. Nos. 41, 42. On January 22, 2025, the Seventh Circuit transferred the plaintiff's motion for leave to proceed on appeal without prepaying the appellate filing fee to this court for a ruling in the first instance. Dkt. Nos. 46, 47.

Generally, "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); see also United States v. Taylor, 796 F.3d 788, 791 (7th Cir. 2015). But

because the plaintiff filed a motion for reconsideration, Federal Rule of Appellate Procedure 4(a)(4) applies:

If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

Fed. R. App. P. 4(a)(4)(B)(i). Rule 4(a)(4)(A) includes, among others, motions brought under Federal Rule of Civil Procedure 59(e) or Rule 60(b). The scenario contemplated by Rule 4(a)(4)(B)(i) occurred here: The plaintiff filed a motion for reconsideration under Federal Rule of Civil Procedure 59(e) (which remains pending), then filed a notice of appeal. Under Fed. R. App. P. 4(a)(4)(B)(i), this court retains jurisdiction to decide the motion for reconsideration, and the notice of appeal will not take effect until the court decides the reconsideration motion.

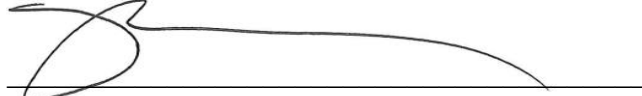
The court will deny without prejudice the plaintiff's motion for leave to proceed on appeal without prepaying the filing fee. The court will issue a separate order deciding the plaintiff's motion for reconsideration (Dkt. No. 41). After the court issues that decision, the plaintiff's notice of appeal will take effect under Fed. R. App. P. 4(a)(4)(B)(i), and the plaintiff may refile his motion for leave to proceed on appeal without prepaying the filing fee. The plaintiff must wait for the court's decision on his motion for reconsideration before refiling his motion for leave to proceed on appeal without prepaying the filing fee. *He must file that motion in this court.*

The court **DENIES WITHOUT PREJUDICE** the plaintiff's motion for leave to proceed on appeal without prepaying the appellate filing fee. Dkt. No. 47.

The court will provide a copy of this order to the United States Court of Appeals for the Seventh Circuit through the court's electronic case filing system.

Dated in Milwaukee, Wisconsin this 24th day of January, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge